



Paper No. 6

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OFFICE OF PETITIONS

In re Application of
Andrus, et al.
Application No. 10/046,418
Filed: October 29, 2001
Attorney Docket No. 31888/5US
For: DEBT FINANCING FOR COMPANIESDECISION GRANTING
PETITION

This is a decision on the petition entitled, "PETITION UNDER 37 CFR 1.181 TO ACCEPT MISSING DRAWING PREVIOUSLY FILED WITH ORIGINAL APPLICATION," filed March 29, 2002 (certificate of mailing date March 21, 2002), requesting, in effect, partial withdrawal of the Notice to File Corrected Application Papers (Notice) insofar as the Notice stated that Figure 4 appeared to have been omitted. The petition will be treated under 37 CFR 1.53(e).

The application was deposited on October 29, 2001. On March 11, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners, *inter alia*, that drawing figure 4 described in the specification appeared to have been omitted.

In response to the Notice, petitioners timely filed the present petition. Petitioners request the October 29, 2001 filing date on the basis that the allegedly omitted drawing figure was received in the Patent and Trademark Office (PTO) on October 29, 2001. In support, the petition is accompanied by a copy of applicants' Express Mail label with a date-in of October 29, 2001 and a copy of applicants' postcard receipt showing an Office of Initial Patent Examination date stamp citing October 29, 2001 as the date of receipt.

Petitioners are advised that the provisions of 37 CFR 1.10(e) cannot be utilized to prove the contents of a mailing. MPEP 513 states, "Where there is a dispute as to the contents of correspondence submitted to the Office,...an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what document(s)... were filed in the Office with such correspondence. Rather, where the records of the Office (e.g. the file of the application) contain any document(s)... corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP 503 containing specific itemization of the document(s)... purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s).. that is not among the official records of the Office."

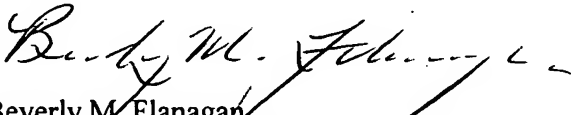
Fortunately, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing October 29, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 6 sheets of drawings. A review of the file indicates that only 4 sheets are present. Sheets corresponding to drawing figures 2 and 4 appear to be missing. The Notice mailed March 11, 2002 should have listed figure 2 as missing, in addition to figure 4.

Nevertheless, the return postcard constitutes *prima facie* evidence that 6 sheets of drawing figures, including drawing figures 2 and 4, were filed on October 23, 2001. MPEP 503. Accordingly, the request is granted.

Pursuant to petitioners' authorization, the \$130.00 petition fee will be credited to deposit account no. 50-0324.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of **October 29, 2001**, using the 6 sheets of substitute drawings, including Figures 2 and 4, submitted on May 6, 2002. Office records will be corrected to show that 6 sheets of drawings were present on filing.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



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